

Draft LA MS4 Order Workshop

State Water Resources Control Board
December 16, 2014

CASQA

Introduction and Overview

- ◆ CASQA generally supports Draft Order
 - ◆ Appreciates consistency with and consideration of CASQA approach and comments on receiving water limitations (RWL) language, and alternative compliance pathways

- ◆ 3 Issues for Consideration
 1. Implications for Other Permittees – exposure for those without alternative compliance pathway options
 2. Compliance through Stormwater Retention – removal of huge incentive
 3. Application of Water Quality Standards (WQS) to Stormwater – challenges of current permitting program

CASQA Recommended Approach to RWLs & Compliance Pathways

- ◆ Needs specificity and accountability
- ◆ All pollutants are not equal
- ◆ Allow compliance with RWLs through good faith implementation of compliance pathways
- ◆ Establish sufficient accountability to assure progress
- ◆ Provide assurances to permittees that good faith implementation of compliance pathway constitutes compliance with RWLs

Draft Order's Principles re: RWL Alternatives are Generally Consistent with Proposed CASQA Approach

- ◆ Allows compliance to be achieved over a period of time
- ◆ Recognizes that timely implementation of alternative compliance pathway (e.g., WMP/EWMP) constitutes compliance with RWLs
- ◆ Encourages watershed-based approaches, green infrastructure, low-impact development principles, multi-benefit projects, etc.
- ◆ Recognizes need for prioritization of issues
- ◆ Recognizes regional differences and discretion in developing permit requirements

Issue 1: Implications for Other Permittees

- ◆ Continued legal exposure for permittees that do not have alternative compliance pathway options in current permits
- ◆ Draft Order provides little direction to Regional Water Boards for addressing continued exposure
- ◆ Alternative pathways need to be feasible for all MS4 Permittees
 - ◆ LA Order WMP/EWMPs are costly
 - ◆ Updated analysis every 6 years (i.e., models) will be costly
 - ◆ Such costs may not be feasible for small Phase I and Phase II communities
 - ◆ Availability of alternative compliance pathways appears to be limited to Phase 1 MS4s

Issue 1: Recommendations

- ◆ Revise Draft Order by expanding guidance to Regional Water Boards by directing them to address legal exposure to other MS4s (as necessary)
- ◆ Direct State Water Board staff to engage stakeholders (including CASQA) in a process to develop alternative compliance pathways for Phase II MS4s

Issue 2: Compliance through Stormwater Retention

- ◆ Goals in State Water Board Storm Water Strategic Initiative (SWSI) include incentives for stormwater capture and use
- ◆ Inclusion of 85th percentile capture as compliance is a significant incentive for multi-benefit projects
- ◆ Language modifications may remove incentives
 - ◆ Requirements for additional plan and actions remove compliance certainty
 - ◆ May disincentivize spending money now for 85th percentile capture for multi-benefit projects

Issue 2: Recommendation

- ◆ Revise Draft Order to direct Regional Water Board staff to provide technical support for 85th Percentile Retention Standard
- ◆ Revise Draft Order to recognize that once technical support has been provided, compliance alone with 85th Percentile Retention Standard may constitute compliance

Issue 3: Application of WQS to Stormwater

- ◆ Draft Order presumes it is feasible and possible for stormwater discharges to comply with *all* RWLs at some point in the future
- ◆ Some WQS are problematic for stormwater discharges – e.g., bacteria
- ◆ State Water Board Orders recognize this challenge -
 - ◆ Order WQ 81-5 (City of Lompoc): Where compliance with the limit (i.e., RWL here) cannot be achieved by reasonable efforts, review of the appropriateness of the objective may be required

Issue 3: Recommendation

- ◆ Revise Draft Order to recognize that it may be necessary to review WQS and how they are applied to stormwater

CASQA - Summary

- ◆ Generally support the Draft Order – constructive step towards realistic and comprehensive watershed programs
- ◆ Recommended modifications to Draft Order
 - ◆ Issue 1: Provide guidance to Regional Water Boards to review existing MS4 permits; direct them to consider if revision is necessary (and reopen if appropriate) to include alternative compliance pathways for addressing RWL requirements
 - ◆ Issue 2: Direct Regional Water Board staff to provide technical support for 85th Percentile Retention Standard; once support is provided, agree that compliance alone with such standard may constitute compliance.
 - ◆ Issue 3: Recognize that it may be necessary to review WQS and how they are applied to stormwater